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Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Computer III Remand	)	
Proceedings: Bell Operating	)	CC Docket No. 90-623
Company Safeguards and	)	
Tier 1 Local Exchange Company	)	
Safeguards	)	
	)	
Application of Open Network	)	
Architecture and Non-	)	CC Docket No. 92-256
Discrimination Safeguards	)	
to GTE Corp.	)	

**Reply Comments of the California Bankers Clearing House,  
the New York Clearing House Association and  
MasterCard International Incorporated**

The Commission's current rules governing access to Customer Proprietary Network Information ("CPNI") grant favored status to the affiliates of local exchange carriers ("LECs") vis-à-vis their competitors in the CPE and enhanced services markets. The comments filed in response to the Public Notice in this proceeding demonstrate that the LECs value this advantage highly and that unaffiliated CPE vendors and enhanced service providers are suffering adverse consequences as a result. Recent industry trends are working to enhance the importance of the competitive considerations that underlie the CPNI rules. The Commission should adapt its rules to meet the new challenge and reject the efforts of the LECs to retain the competitive advantage they enjoy under the current rules in the form of discriminatory access to valuable CPNI.

At issue here are the rules governing access to the information obtained by a telephone company about a customer by virtue of its privileged position as (except in an infinitesimal number of cases) the customer's sole supplier of local telephone service. While the LEC must secure the permission of a large customer (defined as one with more than 20 lines) before sharing access to that customer's CPNI with its CPE and enhanced services affiliates, no such prior permission is required in the case of a customer with 20 or fewer lines. In contrast, CPE and enhanced service providers that are not affiliated with the LEC must obtain prior authorization from each customer, regardless of size, in order to gain access to its CPNI. In other words, the current rules permit the LECs to enjoy the fruits of their monopoly status without the concomitant duty to share them with competitors.<sup>1</sup>

The comments filed in this proceeding make it plain that the current rules, by creating unequal access with respect to CPNI, give the favored parties a substantial advantage over their competitors in the marketing of CPE and enhanced services. The commenters have explained that, thanks to the rules, LEC-affiliated vendors of enhanced services and CPE have advance notice of customers' expansion plans, and information about the kinds of services particular customers use, their calling patterns, call volumes, credit histories, etc.<sup>2</sup> In contrast, an unaffiliated CPE vendor or enhanced service provider

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<sup>1</sup> One commenter has pointed out yet another area in which this asymmetry also exists -- payphones. See *Comments of the American Public Communications Council*.

<sup>2</sup> See *Comments of CompuServe Incorporated* at 6-7, the *Information Industry Ass'n* at 4, the *Information Technology Ass'n of America* at 6, the *Independent Data Communications*

cannot gain access to that information without the prior authorization of the customer. It goes without saying that such authorization can be secured only after the vendor has identified and approached the customer, *i.e.*, not until *after* it has successfully marketed its service to that customer.

As several commenters have noted, recent trends in the communications industry are likely to compound the anticompetitive effect of this Catch-22. As the Regional Bell Operating Companies reach out to form alliances across the communications industry (broadly defined), an ever-widening range of entities will gain favored access to CPNI and, thus, an advantage over vendors that are not so affiliated. The discrimination against unaffiliated entities is thereby magnified. Regardless of whether any particular merger or acquisition has been consummated or called off, the trend toward consolidations and strategic alliances on the part of the Regional Bell Operating Companies is undeniable. The Commission was entirely justified in reassessing its CPNI rules in light of these developments.

The RBOCs have offered two reasons why the Commission should not -- or cannot -- correct the imbalance in the current rules. None of these arguments addresses the problem in the current rules that warrants revision.

First, several companies ground their analyses on the issue of customer privacy. One suggests that industry self-regulation through privacy guidelines (*à la* the Motion Picture Association of America's movie rating system)

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Manufacturers Ass'n at 3, the North American Telecommunications Ass'n at 6, Prodigy Services Co. at 4.

would better serve the public interest and should be substituted for the existing rules.<sup>3</sup> Another states that the Commission should extend the RBOC's current advantage in the multi-line business customer market to the small business and residential markets as well, by granting them access to all CPNI without prior authorization.<sup>4</sup> Still another warns the Commission to beware of any arguments regarding customer privacy made by competitive CPE and enhanced service providers, stating that such arguments mask the true interests of those firms in securing for themselves the same access to CPNI enjoyed by the LECs.<sup>5</sup> So long as customers are given an opportunity to make informed choices regarding the uses to which their CPNI may be put, it appears that privacy considerations are adequately met.<sup>6</sup> But privacy is not, we submit, the area in which the Commission's rules are most in need of reform.

Second, the RBOCs also argue that the current rules, in permitting them unfettered access to the CPNI of smaller customers, should not be changed because such access promotes convenience for the customers and efficiencies for the carriers. Customer convenience is important, but it does not justify disparate treatment of LEC-affiliated vendors on the one hand and

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<sup>3</sup> Comments of Bell Atlantic at 9. Southwestern Bell agrees, claiming that government regulation of CPNI is unnecessary. Comments of Southwestern Bell Telephone Co. at 2.

<sup>4</sup> Comments of US West at 3.

<sup>5</sup> Comments of BellSouth Telecommunications, Inc. at 9 (cautioning the Commission to be suspicious about the self-interested motives of enhanced service providers who may criticize the existing rules).

<sup>6</sup> See Comments of the Public Utility Commission of Texas at 4-5; Cox Enterprises, Inc. at 7-8.

unaffiliated vendors on the other. Indeed, nothing in the Commission's rules outlaws one-stop shopping, and any customer who wishes to purchase basic and enhanced services on an integrated basis can authorize representatives of the LEC-affiliate to have full access to its CPNI. Customers currently have this same right with regard to the release of CPNI to the representatives of unaffiliated CPE and enhanced service vendors. It is not apparent why the goose's sauce is not good enough for the gander.

As for carrier efficiency, the Commission has found that the prior authorization requirement applicable in the case of customers with more than 20 lines would not unduly burden carriers.<sup>7</sup> Nothing in the comments disproves that conclusion or suggests why the opposite conclusion might apply in the case of smaller customers.

Although the Commission has heard many of these arguments before, it has chosen to hear them again in light of events that undeniably raise the stakes regarding the competitive considerations that underlie the CPNI rules. The sponsors of each of the principle telecommunications bills have included provisions that would strengthen the current CPNI rules by requiring the RBOCs to make CPNI available to unaffiliated enhanced service providers on the same terms and conditions as the RBOC's own enhanced service affiliate obtains access to that information.<sup>8</sup> The Congress plainly sees the relevance of recent

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<sup>7</sup> *Allnet Communication Services, Inc. v. National Exchange Carrier Ass'n et al*, Memorandum Opinion & Order 6 FCC Rcd 10 (1991) at 7612.

<sup>8</sup> See Comments of CompuServe at 11 n.13, Newspaper Ass'n of America at 2.

events, and has apparently concluded that competitive considerations warrant parity of treatment with regard to access to CPNI for RBOC affiliates on the one hand and unaffiliated vendors on the other.

Large users recognize that they have a stake in healthy competition in *all* segments of the CPE and enhanced services markets and, for that reason, advocate creation of an even playing field where residential and small business customers are concerned. The Commission is right to question whether its current rules still serve the public interest and would be right to modify them to ensure that CPNI is made available to all competitors on an equal basis.

Respectfully submitted,



Ellen G. Block  
LEVINE, LAGAPA & BLOCK  
1200 Nineteenth St., NW # 602  
Washington, DC 20036  
(202) 223-4980

Counsel for the California Bank  
Clearing House, New York Clearing  
House Association and MasterCard  
International Incorporated

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## CERTIFICATE OF SERVICE

I, Einar Torbjornsen, hereby certify that true and correct copies of foregoing REPLY COMMENTS OF THE CALIFORNIA BANKERS CLEARING HOUSE, the NEW YORK CLEARING HOUSE ASSOCIATION and MASTERCARD INTERNATIONAL INCORPORATED were served this 19th day of May, 1994, by hand delivery or first class mail, postage prepaid, to the foregoing parties.

Rose Crellin\*  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW  
Washington, D.C. 20054

ITS Inc.\*  
2100 M Street  
Suite 140  
Washington, D.C. 20037

Jay Keithley  
United & Central Telephone Company  
1850 M Street, N.W.  
Suite 1100  
Washington, D.C. 20036

Craig T. Smith  
United & Central Telephone Company  
P.O. Box 11315  
Kansas City, MO 64112

William D. Baskett III  
John K. Rose  
Christopher J. Wilson  
Cincinnati Bell Tel. Company  
2500 PNC Center  
201 East Fifth Street  
Cincinnati, OH 45202

Richard A. Askoff  
National Exchange Carrier Assoc.  
100 S. Jefferson Road  
Whippany, New Jersey 07981

Joe D. Edge  
Elizabeth A. Marshall  
Puerto Rico Telephone Company  
Hopkins & Sutter  
888 Sixteenth Street, N.W.  
Washington, D.C. 20006

Anne V. MacClintock  
Vice President - Regulatory Affairs &  
Public Policy  
227 Church Street  
New Haven, CT 06510

Jeffrey L. Sheldon  
General Counsel  
Thomas E. Goode  
Staff Attorney  
Utilities Telecomm. Council  
1140 Connecticut Ave., N.W., Ste 1140  
Washington, D.C. 20036

Glenn B. Manishin  
John S. DiBene  
Charon J. Harris  
Blumenfeld & Cohen  
1615 M Street, N.W., Ste 700  
Washington, D.C. 20036

Daniel L. Brenner  
David L. Nicoll  
National Cable Television Assoc.  
1724 Mass. Avenue, N.W.  
Washington, D.C. 20036

R. Michael Senkowski  
Jeffrey S. Zinder  
Tele-Communications Association  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

Micheal J. Shortley III  
Rochester Telephone Corp.  
180 S. Clinton Avenue  
Rochester, New York 14646

Paul Rodger  
Charles D. Gray  
James B. Ramsay  
NARUC  
1102 ICC Building  
P.O. Box 684  
Washington, D.C. 20044

Philip F. McClelland  
Penn. Office of Consumer Advocate  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

Robert W. Gee  
Chairman  
Karl R. Rabago  
Commissioner  
Sarah Goodfriend  
Commissioner  
7800 Shoal Creek Blvd.  
Austin, Texas 78757

Kathryn M. Krause  
U.S. West Communications Inc.  
1020 19th Street, N.W.  
Suite 700  
Washington, D.C. 20036

Mary McDermott  
U.S. Telephone Association  
1401 H Street, N.W.  
Suite 600  
Washington, D.C. 20005



Robert M. Lynch  
Richard C. Hartgrove  
Micheal J. Zpevak  
Thomas A. Pajda  
Southwestern Bell  
One Bell Center, Room 3520  
St. Louis, MO 63101

John F. Sturm  
Newspaper Association of America  
529 14th Street, N.W., Suite 440  
Washington, D.C. 20045-1402

Sandra G. Weis  
Prodigy Services Co.  
Director of Government Affairs  
445 Hamilton Avenue  
White Plains, New York 10601

Albert H. Kramer  
Robert F. Aldrich  
Dana J. Lesemann  
N. America Telecomm. Assoc.  
Keck, Mahn & Cate  
1201 New York Avenue, N.W.  
Penthouse Suite  
Washington, D.C. 20005-3919

Herbert E. Marks  
Jonathan J. Wadler  
Jefferey A. Campbell  
IDCMA  
Squire, Sanders & Dempsey  
1201 Pennsylvania Avenue, N.W.  
PO Box 407  
Washington, D.C. 20044

Werner K. Hartenberger  
J.G. Harrington  
Steven F. Morris  
Dow, Lohnes & Albertson  
1255 23rd Street, N.W.  
Suite 500  
Washington, D.C. 20037

Steven J. Metalitz  
Information Industry Assoc.  
555 W. Jersey Avenue, N.W.  
Suite 800  
Washington, D.C. 20001

Randolph J. May  
David I. Adelman  
Sutherland, Asbill & Brennan  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Pamela J. Andrews  
2000 West Ameritech Center Dr.  
Room 4H74  
Hoffman Estates, IL 60196-1025

Lawrence W. Katz  
Bell Atlantic  
1710 H. Street, N.W.  
Washington, D.C. 20006

M. Robert Sutherland  
A. Kirven Gilbert III  
4300 Southern Bell Center  
675 W. Peachtree Street  
Atlanta, Georgia 30375

\* By Hand Delivery



---

Einar Torbjørnsen

100.16 certserv2